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In the High Court of Punjab and Haryana at Chandigarh.

C.W.P. No.12132 of 2004.

Date of decision : 3.5.2007.

Shri Jagtar Singh and another ...Petitioners.

vs.

Punjab State Electricity Board and others ...Respondents.

Coram: **Hon'ble Mr. Justice M.M.Kumar.**
Hon'ble Mr. Justice Rajesh Bindal.

Present: Mr.V.K.Shukla,Advocate,for the petitioners.
Mr.Parminder Singh,Advocate,for respondents no.1 to 3.
None for respondents no.4 to 7.

Rajesh Bindal, J.

The petitioners have approached this court with the prayer that the official-respondents be directed to consider their cases for promotion as Regular T-Mates with effect from 9.12.2002 when the juniors to them like respondents no.4 to 7 have been promoted as such.

Briefly the facts are that the petitioners were appointed as Daily-wagers in the year 1988. Subsequently, they were made Work-Charged T-Mates in the scale of Rs.770-1410, vide order dated 7.3.1994. Respondents no.4 to 7 were appointed after the appointment of the petitioners, as Daily-Wagers and were also made Work-Charged T-Mates after the petitioners. However, without considering the claim of the petitioners for being made Regular T-Mates, respondents no.4 to 7, inspite of being junior to the petitioners, were made Regular T-Mates, vide order dated 9.12.2002 (Annexure P1). There was no reason for ignoring the claim of the petitioners as there was nothing adverse against them. Accordingly, the petitioners served a notice of demand dated 1.3.2004 upon the official-respondents. The same was replied to vide memo dated 4.6.2004 by taking the plea that respondents no.4 to 7 in the writ have been working as Regular T-Mates. The petitioners could not be made Regular T-Mates at the relevant

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time as they had failed to give their consent for the same when asked for.

The plea raised by the official-respondents in the reply to the notice of demand has been controverted and it is submitted by the petitioners that they were never asked to give their consent for making Regular T-Mates. No such notice was ever got noted from them, hence, the contention of displaying the notice on the notice board is also an afterthought. It is further submitted that the right to be considered for making Regular T-Mates is dependent on their seniority and not on consent as there is no such requirement. The plea of consent having not been accorded by the petitioners is just to deprive them of their legitimate claim. On the other hand, the official-respondents have raised the same plea as was taken in reply to justice demand notice. It is alleged that when specifically asked for, the petitioners never opted for being made Regular T-Mates. A notice for asking for consent was displayed/ pasted on the notice board of Sub-Division. As respondents no.4 to 7 had submitted their consent and the petitioners having failed to do so, respondents no.4 to 7 rightly made Regular T-Mates. The petitioners cannot, at this stage, raise a grouse for the same. The contention in the written statement regarding display of notice and asking for consent of the petitioners for being made Regular T-Mates has been specifically controverted and the allegations in the writ petition have been reiterated.

Respondents no.4 to 7 though served, but they have chosen not to put in appearance to contest the claim of the petitioners.

We have heard learned counsel for the parties and with their assistance perused the paper-book.

On a consideration of the matter, we find that the claim made by the petitioners deserves acceptance. It is not disputed that respondents no.4 to 7 were juniors to the petitioners as Daily-Wagers as well as Work-Charged T-Mates. They were made Regular T-Mates without considering the claim of the petitioners inspite of the fact that the petitioners are admittedly seniors to them. The only ground put forward by the official-respondents to justify the designation of respondents no.4 to 7 as Regular T-Mates is that when the options were asked for consideration for the post, the petitioners never opted. However, they could not substantiate the same by

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referring to any rule/ regulations/ instructions under which such option was required to be called for. When the claim of a work-charged employee was to be considered for being made regular, there is no occasion for taking his consent as it is not a case where there were two different channels of promotion from a feeder cadre for which the option of an employee is required as to which channel he would like to opt. It was a case of merely making Work-Charged T-Mates as Regular T-Mates for which seniority was the only principle and all the Work-Charged T-Mates were required to be considered as per their seniority. The only ground for not making a Work-Charged T-Mates as Regular T-Mates could be the service record of the employee concerned. Moreover, we do not accept the plea of absence of exercise of option by the petitioners because it is unbelievable that a work charge employee would not like to be regular. However, still the right of consideration is not taken away even under that circumstance.

For the reasons stated above, we find merit in the submissions made by the learned counsel for the petitioners and while accepting the plea raised by him, direct the official-respondents to consider the cases of the petitioners also for being made Regular T-Mates with effect from 9.12.2002, when respondents no.4 to 7 were made Regular T-Mates. The necessary exercise be carried out within a period of two months from the receipt of a copy of this order. In case the petitioners are found entitled to be made Regular T-Mates from any date anterior to the passing of the order, they be given all the consequential benefits arising therefrom.

The writ petition is disposed of in the manner indicated above.

(Rajesh Bindal)
Judge

3.5.2007. **(M.M.Kumar)**
vs. **Judge.**